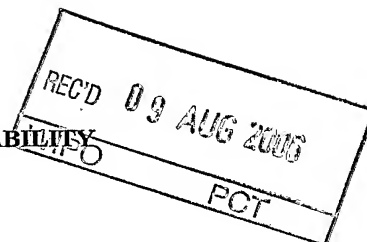


PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)



Applicant's or agent's file reference 03-40171-WO	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/US04/32286	International filing date (day/month/year) 30 September 2004 (30.09.2004)	Priority date (day/month/year) 30 September 2003 (30.09.2003)
International Patent Classification (IPC) or national classification and IPC IPC: C12Q 1/68(2006.01);A61K 48/00(2006.01) USPC: 435/6;514/44		
Applicant SBARRO HEALTH RESEARCH ORGANIZATION		

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 3 sheets, including this cover sheet.
3. This report is also accompanied by ANNEXES, comprising:
 - a. ☐ (sent to the applicant and to the International Bureau) a total of ___ sheets, as follows:
 - ☐ sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).
 - ☐ sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.
 - b. ☐ (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).

4. This report contains indications relating to the following items:

- | | | |
|-------------------------------------|--------------|---|
| <input checked="" type="checkbox"/> | Box No. I | Basis of the report |
| <input type="checkbox"/> | Box No. II | Priority |
| <input type="checkbox"/> | Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability |
| <input type="checkbox"/> | Box No. IV | Lack of unity of invention |
| <input checked="" type="checkbox"/> | Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/> | Box No. VI | Certain documents cited |
| <input type="checkbox"/> | Box No. VII | Certain defects in the international application |
| <input type="checkbox"/> | Box No. VIII | Certain observations on the international application |

Date of submission of the demand 01 August 2005 (01.08.2005)	Date of completion of this report 21 July 2006 (21.07.2006)
Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (571) 273-3201	 Authorized officer Jon Eric Angell Telephone No. (571) 272-1600

Box No. I Basis of the report

1. With regard to the **language**, this report is based on:

- ☒ the international application in the language in which it was filed.
- ☐ a translation of the international application into _____, which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
- ☐ publication of the international application (under Rule 12.4(a))
- ☐ international preliminary examination (under Rules 55.2(a) and/or 55.3(a))

2. With regard to the elements of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

- ☒ the international application as originally filed/furnished
- ☒ the description:
pages 1-16 as originally filed/furnished
pages* NONE received by this Authority on _____
pages* NONE received by this Authority on _____
- ☒ the claims:
pages 17 as originally filed/furnished
pages* NONE as amended (together with any statement) under Article 19
pages* NONE received by this Authority on _____
pages* NONE received by this Authority on _____
- ☒ the drawings:
pages 1-15 as originally filed/furnished
pages* NONE received by this Authority on _____
pages* NONE received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to the sequence listing (*specify*): _____

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to the sequence listing (*specify*): _____

** If item 4 applies, some or all of those sheets may be marked "superseded."*

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/US04/32286**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)

Claims NONE YESClaims 1-4 NO

Inventive Step (IS)

Claims NONE YESClaims 1-4 NO

Industrial Applicability (IA)

Claims 1-4 YESClaims NONE NO

2. Citations and Explanations (Rule 70.7)

Claims 1-4 novelty under PCT Article 33(2) as being anticipated by Claudio et al. (Clinical Cancer Research, 2000).

The instant claims encompass determining if an RB2/p130 gene expression system would be useful in treating lung cancer and then treating the cancer with the RB2/p130 expression system. Claudio teaches the determination that the RB2/p130 expression system would be useful for treating lung cancer and further treating the cancer by administering a retroviral expression vector that expresses the RB2/p130 gene product. As such, Claudio necessarily teaches all of the steps required to treat the cancer as required by the claims.

Claims 1-4 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.